THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO: 6801 of 2004

Dated: 20-03-2006

Between:

Chidura Muthaiah & Company,

Rep., by its Proprietor

Ch.Raji Reddy, Kamareddy.

..... PETITIONER

AND

Government of A.P.,

Rep., by its Dy. Commissioner of

Prohibition and Excise, Karimnagar and two others.

.....RESPONDENTS

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.6801 of 2004

O R D E R:

This writ petition is filed aggrieved by the order of confiscation dated 23-01-

2003 passed by the Deputy Commissioner of Prohibition and Excise, Karimnagar, as confirmed by the third respondent-Commissioner of Prohibition and Excise, Hyderabad, vide order dated
20-12-2003.

The petitioner claims to be a trader in Jaggery, paddy, Maise etc., carrying on its business at Kamareddy. It is stated that 4.985 tones of jaggery was purchased by one
M/s Ashok Trading Company, Kothapalli from the petitioner on 23-08-2002 and the same was dispatched on the same day by vehicle bearing No. AP 25 T 8212. While so, the said vehicle was intercepted by the second respondent-Station House Officer, Prohibition and Excise, Karimnagar, and the vehicle along with the jaggery was seized alleging that the jaggery was being transported without any valid documents for the purpose of manufacture of I.D. liquor. Accordingly a Crime was registered and the proceedings were taken up against the petitioner as well as the owner of the vehicle. Though the petitioner sought for interim release of the seized jaggery, the same was not considered. Subsequently by order dated 23-01-2003 passed by the Deputy Commissioner of Prohibition and Excise, Karimnagar, the jaggery was confiscated under Section 46 (2) of the A.P. Excise Act, 1968
(for short 'the Act') holding that the same was meant for illicit distillation of liquor in and around Kothapalli village, which is hazardous to public health and by a separate order, the vehicle was also confiscated on the same ground. Aggrieved by the same, the petitioner preferred an appeal before the Commissioner of Prohibition and Excise, Hyderabad, but the same was dismissed by order dated 20-12-2003. Hence, this writ petition.

I have heard the learned counsel for the petitioner as well as the learned Government Pleader appearing for the respondents.

The learned counsel for the petitioner contends that the impugned action of the officials in confiscating the jaggery is not in conformity with the Circular dated 03-11-2002 issued by the Commissioner of Prohibition and Excise, Hyderabad, under which it is made clear that the trade in jaggery/black jaggery which is used for lawful purpose is not prohibited. The learned counsel submits that the jaggery in question was being transported under valid permits and other necessary documents, and at any rate since it is not an intoxicant, absolutely

no case is made out to show that the petitioner has committed any offence punishable under the Act and therefore the impugned order of confiscation dated
23-01-2003 is arbitrary and illegal.

It is no longer *res integra* that the black jaggery as such does not come within the purview of the Act. A Full Bench of this Court in *GANESH TRADERS V. DISTRICT COLLECTOR, KARIMNAGAR,* having considered the said issue in detail, held that the black jaggery cannot be treated as 'intoxicant'. Having regard to the above legal position, the Commissioner of Prohibition and Excise, Hyderabad, issued the Circular dated 03-11-2002 with certain instructions to all the subordinate officers which include that the consignment of black jaggery be permitted without any restriction, if the same is covered by way bills/permits issued by the Agricultural Market Committee and the invoices clearly show the names and addresses of the consignor as well as the consignee. In the said Circular, all the subordinate officers were instructed to conduct proper enquiries in respect of the stocks of black jaggery if it was reasonably believed that it was likely to be used for manufacture of I.D. liquor and to take appropriate action accordingly.

In the instant case, the allegation was that the vehicle which was intercepted was carrying 42.12 kgs of black jaggery being transported from Kamareddy to Kothapalli Village. It was alleged that M/s Ashok Trading Company, Kothapalli i.e. purchaser from the petitioner was doing the jaggery business in the area for the last five years and that the area of Kothapalli which is a remote area and most of the people reside therein belong to tribal communities and that the area is notorious for I.D. manufacturing. It was also alleged that there were no cattle feeding agencies in the area to consume large quantities of black jaggery, and that the jaggery was being transported only for the purpose of manufacture of illicit distillation of liquor. Accordingly a Crime for the offence punishable under Section 34 (e) of the Act was registered. Apart from that proceedings were also initiated for confiscation of the vehicle and the stock seized. However, strangely no notice was issued to the petitioner before passing the order of confiscation dated
23-01-2003 by the Deputy Commissioner of Prohibition and Excise, Karimnagar. It is relevant to note that under Section 46 of the Act, where

anything liable for confiscation under Section 45 of the Act is seized or detained, the Officer seizing and detaining such property shall, without any unreasonable delay, produce such seized property before the Deputy Commissioner of Prohibition and Excise who has jurisdiction over the area and on such production the Deputy Commissioner of Prohibition and Excise, if satisfied that an offence under the Act has been committed, order confiscation of such property. However, under Section 46-A of the Act, before passing an order of confiscation, it is mandatory to give notice to the person from whom the property is seized informing the grounds on which it is proposed to confiscate the said property and he should be given an opportunity to make a representation in writing within such reasonable time as may be specified in the notice. The specific case of the petitioner is that no such notice was issued to it before passing the order of confiscation.

A perusal of the order of confiscation dated 23-01-2003 passed by the Deputy Commissioner of Prohibition and Excise as well as the order dated 20-12-2003 passed by the third respondent-appellate authority did not refer to any notice to the petitioner to whom the seized stock belongs. Both the said orders only refer to the notice said to have been issued to the owner of the vehicle. Even the counter affidavit is silent as to the said fact and the learned Government Pleader could not place before this Court any material to show that any such notice was issued to the petitioner to whom the seized stock belongs. In the circumstances, it is clear that the order of confiscation is not in accordance with the mandatory procedure prescribed under Section 46-A of the Act.

That apart the law is well settled that the confiscation under Section 46 of the Act can be ordered only when the offence is punishable under the Act.

In the case on hand, absolutely no case was made out to show that the petitioner had indulged in manufacturing of intoxicants except alleging that the black jaggery was being transported for the purpose of supply to the I.D. manufacturers engaged in illicit distillation.

Having considered the entire material on record, I find force in the contention of the learned counsel for the petitioner that Section 34 (e) of the Act does not apply to the facts on hand.

The order of confiscation dated 23-01-2003 shows that the Excise Officials have intercepted the vehicle at Koyyur and the consignment was seized alleging that the same was being transported for manufacture of illicit liquor. However, it is clear that the said conclusion was arrived at by the respondents only on the ground that no cattle feeding agencies were existing in the area to consume large quantities of black jaggery and that the local people revealed that the said trader was selling black jaggery to the I.D. manufacturers only. Thus it was presumed that the sole purpose of the transportation of the black jaggery was for illicit distillation of liquor.

It is to be noted that similar question was considered by this Court in *ULLI BHASKAR V. STATE OF A.P.* in a petition filed under Section 482 of the Code of Criminal Procedure to quash the criminal proceedings initiated for the alleged offence under Section 34 (e) of the Act. In the said case, the allegation was that the petitioner therein was in possession of black jaggery and that he confessed in the interrogation that he sold the same for the purpose of illicit distillation of liquor. This Court, having considered the scope and object of Section 34 (e) of the Act in detail, held that being in possession of black jaggery even with an intention to manufacture illicit liquor, can, by no stretch of imagination, be said to be an offence, because as per the Excise Act, an offence under Section 34 (e) is committed by a person when he is using the material for the purpose of manufacturing an intoxicant. Following the ratio laid down in the above case, W.P.Nos.16379 and 16389 of 2005, which arise out of the orders of confiscation and based on identical facts, were allowed by order dated 07-12-2005 holding that the ratio laid down in *ULLI BHASKAR*'s case squarely applies since admittedly the petitioners therein were transporting black jaggery, but did not indulge in manufacture of intoxicant. It was also held that merely because the vehicle was found in a different route and the same was intercepted near a village which is notorious I.D. center, the respondents cannot presume that the petitioners had indulged in manufacture of intoxicant within the meaning of Section 34 (e) of the Act.

The petitioner in the present case also stands on the same footing and the orders under challenge show that there is no sufficient material to arrive at a conclusion that the petitioner had indulged in manufacture of intoxicant within the meaning of Section 34 (e) of the Act. Both the third respondent as well as

the Deputy Commissioner of Prohibition and Excise failed to appreciate the said fact in a proper perspective and ordered confiscation mechanically on a presumption that black jaggery was being transported only for the purpose of manufacturing of intoxicant.

In the circumstances, following the ratio laid down in *ULLI BHASKAR*'s case and for the reasons stated in the order dated 07-12-2005 in W.P.Nos.16379 and 16389 of 2005, the impugned order of confiscation dated 23-01-2003 as confirmed by the third respondent-Commissioner of Prohibition and Excise by order dated 20-12-2003 is set aside.

The learned counsel for the petitioner represented that during the pendency of the confiscation proceedings, the seized stock was released on furnishing bank guarantee. Therefore, there shall be a direction to the respondents to return the bank guarantee furnished by the petitioner.

Accordingly, the writ petition is allowed. No costs.

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G.ROHINI,J

Dated: 20-03-2006

Klp/ghn